

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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**B. E. TECHNOLOGY, L.L.C.,**

**Plaintiff,**

**v.**

**Case No. 2:12-cv-02767-JPM-tmp**

**AMAZON DIGITAL  
SERVICES, INC.,**

**Defendant.**

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**UNOPPOSED MOTION TO WITHDRAW AS LOCAL COUNSEL AND LOCAL RULE  
7.2 CERTIFICATE OF CONSULTATION**

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Pursuant to Local Rule 83.5, Richard M. Carter, Adam J. Eckstein and the firm of Martin, Tate, Morrow & Marston, P.C. (collectively “Martin Tate”) hereby move for an order granting them leave to withdraw from the representation of B.E. Technology, L.L.C. (“B.E. Technology”) in the above-captioned matter. In support of its motion, Martin Tate submits an attached memorandum of law, which is incorporated herein by reference.

Respectfully submitted,

/s/Richard M. Carter

Richard M. Carter (TN B.P.R. #7285)

Adam J. Eckstein (TN B.P.R. #27200)

MARTIN, TATE, MORROW & MARSTON, P.C.

6410 Poplar Avenue, Suite 1000

Memphis, TN 38119-4839

Telephone: (901) 522-9000

Facsimile: (901) 527-3746

Email: [rcarter@martintate.com](mailto:rcarter@martintate.com)

[aeckstein@martintate.com](mailto:aeckstein@martintate.com)

*Attorneys for B. E. Technology, L.L.C.*

**CERTIFICATE OF CONSULTATION**

Pursuant to Local Rule 7.2(a)(1)(B), I, the undersigned Richard M. Carter certify that on August 22, 2018, I consulted by phone and email with counsel for Amazon Digital Services, Inc., Mark Vorder-Bruegge, Jr., regarding this motion. Mr. Vorder-Bruegge informed me that Amazon Digital Services, Inc. does not oppose this motion.

/s/ Richard M. Carter

Richard M. Carter

**CERTIFICATE OF SERVICE**

I hereby certify that on August 24<sup>th</sup>, 2018, a true and correct copy of the foregoing was electronically filed with the United States District Court for the Western District of Tennessee and was served on all counsel by the Court's electronic filing notification or via email. Pursuant to Local Rule 83.5, a true and correct copy of the foregoing was served on the President and Chief Executive Officer of B.E. Technology, L.L.C. by email and by United States mail, postage prepaid, at the mailing address below:

Martin David Hoyle  
B.E. Technology, L.L.C.  
116 Viking Drive  
Cordova, Tennessee 38018-7261

/s/ Richard M. Carter

Richard M. Carter

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**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO WITHDRAW AS  
LOCAL COUNSEL**

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Pursuant to Local Rule 83.5, Richard M. Carter, Adam J. Eckstein and the firm of Martin, Tate, Morrow & Marston, P.C. (collectively “Martin Tate”) hereby move for an order granting them leave to withdraw from the representation of B.E. Technology, L.L.C. (“B.E. Technology”) in the above-captioned matter. Withdrawal is permissible under both the Tennessee Rules of Professional Conduct and Local Rules of this Court; therefore, Martin Tate respectfully asks the Court to grant this request for leave to withdraw.

**A. Applicable Law**

“Attorney withdrawal issues are ‘committed to the court’s discretion,’ and the Tennessee Rules of Professional Conduct are instructive.” *Sledge v. Indico Sys. Res.*, No. 2:13-cv-2578-STA-CGC, 2015 WL 12867316, at \*1 (W.D. Tenn. April 6, 2015) (quoting *Brandon v. Blech*, 560 F.3d 536, 537 (6th Cir. 2009)). Pursuant to Tennessee Rules of Professional Conduct 1.16(b), withdrawal is permissible if: “withdrawal can be accomplished without material adverse effect on the interests of the client,” “the client fails substantially to fulfill an

obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled," "the representation . . . has been rendered unreasonably difficult by the client," or "other good cause for withdrawal exists." Tenn. R. Prof'l Conduct 1.16(b).

Local Rule 83.5 provides that:

No attorney of record may withdraw in any case except on written motion and Court order. All motions for leave to withdraw shall include the reasons requiring withdrawal and the name and address of any substitute counsel. If the name of substitute counsel is not known, the motion shall set forth the name, address and telephone number of the client, as well as the signature of the client approving the withdrawal or a certificate of service on the client. Ordinarily, withdrawal will not be allowed if withdrawal will delay the trial of the action.

LR 83.5; *see Means v. Phillips*, 136 F. Supp. 3d 872, 889 n.20 (W.D. Tenn. 2015) (stating the requirements of the local rule).

#### **B. Withdrawal is Permissible under the Above Standards**

When B. E. Technology engaged Martin Tate as local counsel in the above-captioned action, it was understood and agreed that Freitas & Weinberg, LLP ("Freitas & Weinberg") would be serving as lead counsel. Martin Tate and B.E. Technology agreed to limit the scope of Martin Tate's representation to serving as local counsel, and B.E. Technology gave informed consent as to this limitation. When Freitas & Weinberg in 2017, notified B.E. Technology that it planned to withdraw as counsel, Martin Tate promptly notified B.E. Technology that Martin Tate would not act as lead counsel and also would seek to withdraw as local counsel unless B.E. Technology could find suitable lead counsel. Since November, 2017, B.E. Technology has not identified suitable lead counsel. B.E. Technology has asked Martin Tate to remain as local counsel while it attempts to engage new lead counsel. Despite the passage of many months B.E. Technology still has not advised Martin Tate what firm would replace Freitas & Weinberg. Therefore, B.E. Technology

has failed to fulfill an obligation to Martin Tate regarding its services after being given reasonable warning that Martin Tate will withdraw unless that obligation is fulfilled.

Furthermore, irresolvable differences have developed between B.E Technology and Martin Tate as to the role that Martin Tate is to play in this litigation. The disagreement has made it unreasonably difficult for Martin Tate's representation to continue such that Martin Tate cannot continue to represent B.E. Technology. Thus, there is a sufficient basis to permit Martin Tate to withdraw.

This withdrawal would have no adverse material affect on B.E. Technology. As Freitas & Weinberg noted in its motion, this litigation has been stayed since December 6, 2013, and the stay was lifted on August 3, 2018. Order Granting Motions to Stay, ECF No. 71; Order Lifting Stay, ECF No. 85. Martin Tate had no involvement in the inter partes review ("IPR") or the appeal of the IPR decision. Amazon has not yet filed an answer, discovery has been minimal, and trial has not yet been set. Thus, there is no prejudice to B.E. Technology because this case is still in its preliminary stages.

Therefore, there is a sufficient basis to permit Martin Tate to withdraw from representation of B.E. Technology. B.E. Technology has failed to fulfil its obligations to Martin Tate and has been given reasonable warning that Martin Tate will withdraw unless that obligation is fulfilled. Withdrawal is also permissible as the representation has been rendered unreasonably difficult by B.E. Technology. Furthermore, withdrawal would not have a material adverse effect on B.E. Technology. Alternatively, Martin Tate asks that the Court find that other good cause for withdrawal exists.

Martin Tate does not believe that a hearing is necessary for the Court to rule on this motion. In accordance with Local Rule 83.5, copies of this motion have been served on B.E. Technology both by Unites States mail and by email.

Respectfully submitted,

/s/ Richard M. Carter

Richard M. Carter (TN B.P.R. #7285)

Adam J. Eckstein (TN B.P.R. #27200)

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6410 Poplar Avenue, Suite 1000

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Telephone: (901) 522-9000

Facsimile: (901) 527-3746

Email: [rcarter@martintate.com](mailto:rcarter@martintate.com)

[ackstein@martintate.com](mailto:ackstein@martintate.com)

*Attorneys for B. E. Technology, L.L.C.*